



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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BY E-MAIL AND USPS

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RE: MUR.7292
Clifford B. Stearns, *et al.*

Dear Mr. Spies and Ms. Skinner Carlough:

On November 3, 2017, the Federal Election Commission (the "Commission") notified your clients Representative Clifford B. Stearns and Friends of Cliff Stearns and Joan Stearns in her official capacity as treasurer (the "Committee") of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your clients with a copy of the complaint. You filed a response on behalf of your clients on November 21, 2017.

After reviewing the allegations contained in the complaint, your clients' response, and publicly available information, the Commission on March 19, 2019, found reason to believe that Clifford B. Stearns and the Committee violated 52 U.S.C. § 30114(b), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

Enclosed is a conciliation agreement for your consideration. The agreement requires Representative Stearns to repay the Committee \$12,239.40 for disbursements made by the Committee for Stearns's personal expenses, and includes an \$8,000 civil penalty. The civil penalty for violations of the Act may be the greater of either the statutory civil penalty or the

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amount of the contribution or expenditure involved in the violation. 52 USC § 30109(a)(5); 11 CFR § 111.24(a)(1). The civil penalty here is based on the amount in violation and includes a 25% pre-probable cause conciliation discount.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Wanda D. Brown, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within 60 days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis
Conciliation Agreement
Procedures

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Clifford "Cliff" B. Stearns **MUR: 7292**
6 Friends of Cliff Stearns and
7 Joan Stearns in her official
8 capacity as treasurer
9

10 **I. INTRODUCTION**

11 The Complaint in this matter alleges violations of the personal use provisions of the
12 Federal Election Campaign Act of 1971, as amended (the "Act"), in connection with
13 disbursements made by former Congressman Clifford B. Stearns and his authorized campaign
14 committee, Friends of Cliff Stearns and Joan Stearns in her official capacity as treasurer (the
15 "Committee") (collectively, "Respondents"). The Complaint alleges that Stearns, who has not
16 been a candidate since 2012, used over \$36,000 in Committee funds for post-candidacy personal
17 expenses including, among other things, monthly cell phone bills, monthly salary payments to
18 Stearns's wife, political contributions meant to further Stearns's lobbying career, membership
19 dues and expenses at the National Republican Club of Capitol Hill (the "Capitol Hill Club"),
20 expenses associated with a retreat hosted by Awakening, Inc., storage fees, and miscellaneous
21 credit card charges, in violation of 52 U.S.C. § 30114(b).

22 Respondents deny the allegations, asserting that the disbursements in question are
23 permissible uses related to Committee expenses or to Stearns's duties as a former federal
24 officeholder. The response also states that, out of "an abundance of caution," Stearns has
25 reimbursed the Committee for the cell phone bills and food and beverages at the Capitol Hill
26 Club. Further, Respondents acknowledge that they did not itemize a small number of
27 disbursements related to credit card charges, but argue that even if the disbursements should

1 have been itemized, the failure to itemize those charges was a *de minimis* error and that the
2 Commission should dismiss this matter.

3 As discussed below, it appears that at least the Committee's disbursements to
4 Awakening, Inc., the Capitol Hill Club, and to pay for lodging for Stearns when he traveled to
5 Jacksonville, Florida were made for personal expenses, in violation of 52 U.S.C. § 30114(b).
6 Accordingly, the Commission finds reason to believe that Stearns and the Committee violated
7 the Act by expending campaign funds for personal use.

8 II. FACTUAL BACKGROUND

9 Clifford "Cliff" B. Stearns is a former U.S. Representative from Florida's 6th
10 Congressional District. Stearns held his seat from 1989 to 2013. Stearns's principal campaign
11 committee holds over \$1.64 million in cash on hand and carries no debt.¹ Joan Stearns, the wife
12 of the former candidate, is the Committee's treasurer.

13 The Complaint alleges that since leaving his Congressional office, Stearns has been
14 violating the Act by converting campaign funds to personal use.² Specifically, the Complaint
15 alleges that Stearns has used Committee funds to further his lobbying career and subsidize his
16 family by: (1) paying Verizon for a monthly cell phone bill; (2) making payments to his wife,
17 the Committee's treasurer, for "administrative services"; (3) paying for membership dues, meals,
18 and beverages at the Capitol Hill Club; (4) making contributions to political candidates;
19 (5) paying for attendance and meals at a retreat hosted by Awakening, Inc.; (6) paying for the use
20 of a storage facility; (7) paying for book appraisal services; (8) paying for framing services; (9)

¹ Friends of Cliff Stearns, 2017 Year-end Report, FEC Form 3, *Report of Receipts and Disbursements* at 2 (Jan. 29, 2018), <http://docquery.fec.gov/cgi-bin/forms/C00229377/1201427/>. The Committee discloses no contributions received on recent reports. It appears that receipts are limited to profits from the investment of Committee funds, *e.g.*, recurring receipts from T. Rowe Price and the Vanguard Group. *Id.*

² Compl. at 1 (Oct. 27, 2017).

- 1 paying credit card bills for "holiday cards" and "books/gifts"; and (10) paying unitemized credit
2 card bills.³ The Complaint alleges that the total disbursements made for personal use since
3 Stearns left office are as follows:⁴

Disbursement	Purpose	Amount
Verizon	Cell Service	\$5,180.00
Joan Stearns	Administrative Support	\$5,000.00
National Republican Club of Capitol Hill	Membership Dues/Food and Beverage	\$4,118.95
Various Political Candidates ⁵	Contributions	\$5,000.00
Awakening, Inc. ⁶	Annual Conservative Retreat	\$6,040.00
Neighborhood Storage	Storage Services	\$6,008.00
Roger's Frame Shop	Framing Services	\$1,093.51
Second Story Books	Appraisal	\$340.00
Card Services	Holiday Cards	\$380.14
Card Services	Books/gifts	\$1,469.42
Card Services	Not itemized	\$2,246.45
	Total	\$36,876.47

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5 The Complaint contends that many of the disbursements at issue were for expenses that
6 the Committee never paid for while Stearns was a candidate or a U.S. Representative.⁷ For
7 example, the Complaint indicates that the Committee did not report payments to Verizon for a
8 cell phone while Stearns was a candidate or a member of Congress.⁸ In addition, the Complaint

³ *Id.* at 3-8.

⁴ *Id.*

⁵ *Id.* at 4-5. Specifically, the Complaint alleges that Stearns used campaign funds for the following contributions made in order to further Stearns's lobbying career: (1) \$2,000 to Rep. Chris Smith; (2) \$1,000 to Rep. Greg Walden; (3) \$1,000 to Sen. Kelly Ayotte; and (4) \$1,000 to Rep. John Mica.

⁶ The amount at issue in this allegation, \$6,040, is the total of six payments to Awakening, Inc.: (1) \$1,320 on January 10, 2014; (2) \$650 on October 19, 2014; (3) \$1,320 on November 20, 2014; (4) \$1,850 on October 14, 2015; (5) \$350 on January 7, 2017; and (6) \$550 on May 1, 2017.

⁷ Compl. at 5.

⁸ *Id.*

1 notes that the Committee began paying Joan Stearns \$1,000 a month for "administrative
2 services" in June 2017, over three years after Stearns left office, and argues that the payments
3 exceed the fair market value for a treasurer given the Committee's limited activity during this
4 period.⁹

5 Finally, the Complaint alleges that the contributions made to various candidates, as well
6 as the membership dues to the Capitol Hill Club, are tied to Stearns's position as a paid lobbyist.
7 In support of this allegation, the Complaint includes information from a news article noting that
8 Stearns has contributed funds from his campaign account to "lawmakers with influence over
9 issues he's being paid to lobby on, including foreign investment and energy."¹⁰

10 Respondents deny that Stearns converted Committee funds for personal use.¹¹ They
11 argue that the Act and Commission regulations allow excess campaign funds to be used for a
12 variety of purposes, including "paying ordinary and necessary expenses incurred in connection
13 with duties of the individual as a holder of Federal office," contributing to tax exempt
14 organizations, and "any other lawful purpose" as long as the expenses would not exist
15 irrespective of a campaign or duties as a federal officeholder.¹² Respondents explain that Stearns
16 maintains the Committee because he has not ruled out another run and that the expenses listed in

⁹ *Id.* at 5-6 & 11 n.60. Joan Stearns was named Committee treasurer in an amended Statement of Organization filed with the Commission on April 6, 2013. *See* Friends of Cliff Stearns, FEC Form 1 *Statement of Organization* (Apr. 6, 2013), <http://docquery.fec.gov/cgi-bin/forms/C00229377/864148/>. The Complaint contrasts the payments to Joan Stearns for administrative services with the fact that the Committee did not pay Joan Stearns for serving as treasurer during the 2014 or 2016 election cycles.

¹⁰ Compl. at 3-4 (citing Bill Theobald and Donovan Slack, *Former Lawmakers Sit on Tens of Millions in Campaign Cash*, USA TODAY (July 31, 2015).

¹¹ Resp. at 1 (Nov. 21, 2017). Stearns and the Committee were separately notified of this complaint. After only the Committee filed a response, Respondents' counsel later indicated that the response was on behalf of both Stearns and the Committee.

¹² *Id.*

1 the Complaint were related to Stearns's previously held federal office or are otherwise
2 permissible uses of campaign funds.¹³

3 Respondents specifically assert that the cell phone payments are legitimate because they
4 cover the cost of a Verizon hotspot used by the Committee to file reports with the Commission.¹⁴
5 However, in an "abundance of caution," Stearns has reimbursed the Committee \$5,180 for the
6 cost of the cell phone service and cell phone.¹⁵

7 Moreover, Respondents argue that Commission regulations allow campaign funds to be
8 used for membership dues to an organization that has political interests, and contend that Stearns
9 consulted with Commission staff and was told that it was permissible to pay membership fees for
10 the Capitol Hill Club with Committee funds.¹⁶ Respondents explain that, when made aware that
11 meals at the Capitol Hill Club may not be treated in the same manner as Capitol Hill Club
12 membership fees, Stearns reimbursed the Committee \$2,019.95 for the cost of food and
13 beverages purchased at the Capitol Hill Club.¹⁷

14 Respondents further contend that the Act allows candidate committees to make
15 contributions to federal, state, or local committees and candidates. Respondents point to the
16 Committee's contributions to other candidates and committees that were not listed in the

¹³ *Id.* at 1-3.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 2. On May 19, 2014, Stearns spoke with his Committee analyst in the Reports Analysis Division ("RAD") regarding permissible uses of residual campaign funds. The analyst explained the general guidelines of personal use, but referred Stearns to the Information Division. On June 16, 2017, Joan Stearns contacted RAD and asked questions about converting the Committee to a multicandidate committee. The Committee has not made changes to its organization.

¹⁷ *Id.*

1 Complaint as evidence that the Committee's contributions to candidates were not made to further
2 Stearns's lobbying career.¹⁸ Respondents maintain that the motivation for the contributions is
3 irrelevant and does not fall under the Commission's jurisdiction.¹⁹

4 With regard to the payments to Joan Stearns, Respondents state that, as the treasurer of
5 the Committee, Joan Stearns prepares and files reports with the Commission, prepares tax filings,
6 and handles correspondence and requests for charitable donations.²⁰ According to Respondents,
7 the Committee executed a contract in June 2017 with Joan Stearns that sets forth a \$1,000
8 monthly payment in exchange for her professional services to the Committee, which the
9 Committee maintains is the fair market value for her services.²¹

10 As to the remaining disbursements, Respondents assert that the Committee's payments to
11 Awakening, Inc. for "conference fees and related expenses" are permissible charitable donations
12 to a section 501(c)(3) non-profit organization and explain that the Committee's disbursements
13 for framing and book appraisal relate to Stearns's donation of materials to other educational and
14 non-profit institutions: the College of Central Florida and the Ocala Public Library.²² The
15 Respondents further argue that the Committee's disbursements for holiday cards were
16 permissible *de minimis* value "gifts" for supporters and that the disbursements for books and
17 gifts were to purchase Stearns's book, for which Respondents assert Stearns received no

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* Respondents argue that there is no legal significance to the fact that Joan Stearns previously offered her services as a treasurer at no cost. *Id.* at 3-4.

²² *Id.* at 4-5 (noting that the Committee sent holiday cards "in order to garner and sustain support" in light of Stearns's "open mind in regard to running for office" again).

1 royalties, as *de minimis* value gifts for supporters.²³ The Respondents also state that the cost of
2 the storage unit is "an ordinary and necessary expense incurred with Representative Stearns's
3 duties as a holder of Federal office."²⁴ Finally, Respondents explain that the unitemized
4 expenses paid for with the Committee credit card were an \$1,850 payment to Awakening, Inc.,
5 for another conference, \$166 for the Committee post office box, and \$230.45 for lodging for
6 Stearns when he attended a charitable event.²⁵

7 III. LEGAL ANALYSIS

8 The Act affords federal candidates and their campaign committees wide discretion in the
9 disposition of their campaign funds and provides that contributions accepted by a candidate may
10 be used in several categories of permissible non-campaign uses of campaign funds, including the
11 "ordinary and necessary expenses incurred in connection with duties of the individual as a holder
12 of Federal office."²⁶ Such expenses include the "costs of winding down the office of a former
13 Federal officeholder for a period of 6 months after he or she leaves office."²⁷ Commission
14 regulations specify that any use of funds that would be personal use "will not be considered . . .
15 an ordinary and necessary expense incurred in connection with the duties of a holder of Federal
16 office."²⁸ Candidates and their committees may also use campaign funds to make donations to

²³ *Id.* at 4 (noting that the Committee ended up donating the books to Goodwill).

²⁴ *Id.* at 5 (noting that Stearns is not winding down his campaign).

²⁵ *Id.* The credit card payment for \$1,850 that was used to pay Awakening, Inc. was not itemized and was therefore not included in the \$6,040 the Complaint alleges were impermissible payments to Awakening, Inc.

²⁶ 52 U.S.C. § 30114(a)(2).

²⁷ 11 C.F.R. § 113.2(a)(2).

²⁸ 11 C.F.R. § 113.1(g)(5).

1 tax-exempt organizations described in section 170(c) of the Internal Revenue Code and for "any
2 other lawful purpose" that does not convert the funds to personal use.²⁹

3 Conversion to personal use occurs when funds in a campaign account are used "to fulfill
4 any commitment, obligation, or expense of a person that would exist irrespective of the
5 candidate's election campaign or individual's duties as a holder of Federal office."³⁰ The Act
6 and Commission regulations further set forth certain uses of campaign funds that constitute *per*
7 *se* conversion to personal use, including utility payments, non-campaign-related automobile
8 expenses, and dues and fees for health clubs, recreational facilities or other nonpolitical
9 organizations unless they are part of the costs of a specific fundraising event taking place on
10 those premises.³¹ In addition, salary payments to family members are personal use, unless the
11 family member is providing *bona fide* services to the campaign.³² Any salary payment to a
12 candidate's family member that exceeds the fair market value for the services provided to the
13 campaign is a conversion to personal use.³³ Similarly, an otherwise permissible charitable
14 donation to a tax-exempt organization would constitute personal use if the candidate receives

²⁹ See 52 U.S.C. § 30114(a)(3), (6); 11 C.F.R. § 113.2(b), (e).

³⁰ See 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

³¹ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i); *see also* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995) ("Personal Use E&J") (explaining that club membership fee provision at 11 C.F.R. 113.1(g)(1)(i)(G) does not "limit legitimate campaign related or officeholder related activity" and "allows a candidate or officeholder to use campaign funds to pay membership dues in an organization that may have political interests. This would include community or civic organizations that a candidate or officeholder joins in his or her district in order to maintain political contacts with constituents or the business community.").

³² 11 C.F.R. § 113.1(g)(1)(i)(H).

³³ *Id.*; *see also* Personal Use E&J, 60 Fed. Reg. at 7866.

1 compensation from the recipient organization before it has expended the entire amount donated
2 for purposes unrelated to the candidate's personal benefit.³⁴

3 For all other disbursements, the Commission determines on a case-by-case basis whether
4 a given campaign fund disbursement is personal use by applying the "irrespective test," that is,
5 whether the payment fulfills a commitment, obligation, or expense that would exist irrespective
6 of the candidate's campaign or duties as a federal officeholder.³⁵ The Commission has stated
7 that "[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or
8 officeholder activities, the Commission will not consider the use to be personal use."³⁶ The
9 Complaint in this matter alleges that Stearns impermissibly spent over \$36,000 in campaign
10 funds for his personal expenses after he ceased being a candidate in 2012 and a federal
11 officeholder in 2013. A review of the disbursements specified in the Complaint³⁷ shows that a
12 number of the disbursements appear to be permissible uses of campaign funds. First, the
13 Committee's contributions to other candidates are permissible subject to the Act's limitations.³⁸
14 Second, it appears that the Committee made *per se* charitable donations when it: (1) framed and
15 donated a photograph, among other items, to the College of Central Florida; (2) paid for the
16 appraisal of books donated to a public library; and (3) paid for a number of copies of Stearns's
17 book which were then donated to Goodwill.³⁹ Finally, it is reasonable to infer that the cost of a

³⁴ 11 C.F.R. § 113.2(b).

³⁵ 11 C.F.R. § 113.1(g)(1)(ii).

³⁶ See Personal Use E&J, 60 Fed. Reg. at 7863-64.

³⁷ See *supra* at 3.

³⁸ 52 U.S.C. § 30102(e)(3)(B) and 11 C.F.R. § 102.12(c)(2). All of the Committee's contributions to candidates appear to be within the Act's limits.

³⁹ See 11 C.F.R. § 113.1(g)(2).

1 post office box would be necessary for even a dormant committee to receive correspondence,
2 and therefore it appears that the \$166 payment for the box is permissible.

3 There is reason to believe, however, that at least certain disbursements may constitute
4 impermissible personal use of campaign funds in whole or in part. First, the Committee reported
5 disbursements totaling \$7,890 to Awakening, Inc.⁴⁰ While the Committee could permissibly
6 make charitable donations to a group such as Awakening, Inc., which appears to be a section
7 501(c)(3) organization, at least some portion of these payments appear to be in exchange for
8 Stearns to attend and eat meals at Awakening's annual conferences and thus were not donations
9 within the scope of 11 C.F.R. § 113.1(g)(2).⁴¹ The Committee's payment of the fees for Stearns
10 to attend and consume meals at Awakening's annual conference appears to fulfill a commitment,
11 obligation, or expense that would exist irrespective of Stearns's campaigns or duties as a federal
12 officeholder. Accordingly, at least some portion of the payments to Awakening, Inc. appear to
13 have been made for personal use.

14 Second, the Committee paid \$4,118.95 in membership fees and expenses to the Capitol
15 Hill Club. Although the use of campaign funds by candidates and Federal officeholders for
16 membership in an organization that would have political interests (like the Capitol Hill Club) is
17 not personal use,⁴² Stearns is neither a candidate nor a Federal officeholder and has not been

⁴⁰ See *supra* note 6.

⁴¹ See Resp. at 4. The reported \$550 "Awakening deposit" on May 1, 2017 and the reported \$350 "contribution" on January 1, 2017 appear to correspond with the registration fee for one individual (\$550) and meal fee (\$350) at Awakening's 2017 annual conference. The reported \$1,850 "Donation" to Awakening on October 14, 2015 appears to correspond with the registration fee for one family (\$750) and two individuals (\$1,100) at Awakening's 2016 annual conference. The combined total of the \$1,970 reported "Donation[s]" in October and November 2014 appear to correspond with the registration fees for two couples (\$1,300) and two meal fees (\$670) at Awakening's 2015 annual conference.

⁴² Personal Use E&J, 60 Fed. Reg. at 7866.

1 either for over five years. Nor does it appear that Stearns is remaining a member of the Capitol
2 Hill Club for purposes related to running again for federal office, such as maintaining political
3 contacts with constituents or the business community. Accordingly, because the Committee's
4 payment of Stearns's club dues, fees, and expenses fulfills a commitment, obligation, or expense
5 that would exist irrespective of Stearns's campaign or duties as a federal officeholder, there is
6 reason to believe payments to the Capitol Hill Club constitute personal use.

7 The Committee also states that it paid \$230.45 for lodging for Stearns when he traveled
8 to Jacksonville, Florida to present a \$2,500 contribution to an elementary school. While the
9 contribution to the school is permissible under 11 C.F.R. § 113.1(g)(2), the cost of lodging seems
10 to be for Stearns's personal benefit rather than a charitable donation within the scope of
11 11 C.F.R. § 113.1(g)(2) and therefore appears to constitute personal use.

12 Based on the foregoing, the Commission finds reason to believe that Respondents
13 violated 52 U.S.C. § 30114(b) by paying attendance and meal fees to Awakening, Inc., paying
14 the membership fees and expenses to the Capitol Hill Club, and by paying for lodging.